

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KIMBERLY ALLEN, Personal
Representative of the ESTATE
OF TODD ALLEN, Individually,
on Behalf of the ESTATE OF
TODD ALLEN, and on Behalf of
the Minor Child PRESLEY
GRACE ALLEN,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. A04-0131 (JKS)

DEPOSITION OF KIMBERLY ALLEN

Pages 1 - 167, inclusive

Tuesday, April 12, 2005, 9:40 a.m.

Anchorage, Alaska

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<p>1 like that that he did on a regular basis?</p> <p>2 A. Not that I can think of right now. If I can</p> <p>3 think of anything else, I will tell you.</p> <p>4 Q. And can you give me an idea: What was</p> <p>5 Mr. Allen's work like? And I'm talking about the work</p> <p>6 that he was doing, let's say, in 2001, 2002, 2003 down</p> <p>7 in Valdez. What exactly was he doing?</p> <p>8 A. What did -- what was -- could you rephrase</p> <p>9 that?</p> <p>10 Q. I'm not interested in his job title</p> <p>11 necessarily or what company he worked for. I'm trying</p> <p>12 to get an idea of, you know, what did he do? Did he</p> <p>13 drive a truck? Was he working in an office? Did he</p> <p>14 work out on fishing vessels? Was he -- you know, sort</p> <p>15 of not so much his title, but what was he actually</p> <p>16 doing?</p> <p>17 A. Based on what I know, which could not</p> <p>18 include everything, he was on a boat, you know,</p> <p>19 driving a boat a lot. He was a deckhand on a boat out</p> <p>20 of Valdez on SERV'S. A lot of labor. SERV'S is an oil</p> <p>21 spill response company, and so they had to maintain</p> <p>22 the equipment and keep it up to safety standards.</p> <p>23 Q. Now, I take it during this whole time that,</p> <p>24 unless I missed something, there weren't oil spills</p> <p>25 all the time. They were training for possible oil</p>	<p>1 Q. And when he was working for the week, was he</p> <p>2 gone and living at whatever plant he was at?</p> <p>3 A. He was not living at the plant. He was in</p> <p>4 Valdez, living with his friend, you know, downstairs.</p> <p>5 Will Kompkoff has a house that has upstairs and</p> <p>6 downstairs with an apartment downstairs, and he stayed</p> <p>7 there.</p> <p>8 Q. Okay. So he would work during the day, but</p> <p>9 he would be on his own and living wherever he was</p> <p>10 staying at night?</p> <p>11 A. Yes and no, because every other week it</p> <p>12 switched. Like one week he would work days for</p> <p>13 12 hours and have a week off. Then the next week he</p> <p>14 would work nights for 12 hours.</p> <p>15 Q. But he would still be in Valdez working 12</p> <p>16 hours and then be off 12 hours?</p> <p>17 A. Correct.</p> <p>18 Q. And so while you were living in Anchorage</p> <p>19 then, he was away for that week in Valdez while he was</p> <p>20 working?</p> <p>21 A. Correct.</p> <p>22 Q. Then he would come back to Anchorage?</p> <p>23 A. Correct.</p> <p>24 Q. Well, I would like to ask you a few</p> <p>25 questions about Mr. Allen's medical history. And it's</p>
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<p>1 spills in the future?</p> <p>2 A. There was a few minor oil spills that I'm</p> <p>3 aware of that he mentioned to me, nothing significant,</p> <p>4 that they responded to. But there were a lot of --</p> <p>5 one of his things -- one of the things he had to do</p> <p>6 was go on oil spill training exercises, where they</p> <p>7 would go down to Kodiak, where all of their equipment</p> <p>8 is stationed, and train people in the community on how</p> <p>9 to properly use the equipment.</p> <p>10 Q. And from the information -- well, I didn't</p> <p>11 mean to cut you off. Was there anything else that you</p> <p>12 would include in terms of what he was doing? And I</p> <p>13 realize this is all just what you know. I want to get</p> <p>14 as much information as I can.</p> <p>15 A. Yeah, sure. He was -- you know, they had</p> <p>16 to -- he drove trucks. He had his class A CDL</p> <p>17 license, so he was capable of doing that. Everything</p> <p>18 had to be documented. There was a lot of</p> <p>19 documentation with that job. There was a lot of</p> <p>20 safety requirements. That was the key number one</p> <p>21 thing.</p> <p>22 Q. I saw somewhere in the information that his</p> <p>23 schedule was such that he was working like a week on,</p> <p>24 a week off?</p> <p>25 A. Correct.</p>	<p>1 pretty extensive. I'm not going to cover all the</p> <p>2 records, but I do want to talk about a couple of</p> <p>3 events or time periods. And the first, I guess, is</p> <p>4 the incident -- the car accident that he had. And</p> <p>5 I'll refer to it as the car accident. But you</p> <p>6 understand I'm talking about the pedestrian accident</p> <p>7 he had, where he was hit while walking on the road?</p> <p>8 A. On the sidewalk, yes.</p> <p>9 Q. And that's what I mean. And the records</p> <p>10 indicate that was in November of 1999. Is that --</p> <p>11 A. Correct.</p> <p>12 Q. All right. And you knew Mr. Allen then?</p> <p>13 A. Yes.</p> <p>14 Q. You were living with him?</p> <p>15 A. Yes.</p> <p>16 Q. Were you present when the accident happened?</p> <p>17 A. No.</p> <p>18 Q. And so did you see Mr. Allen at the hospital</p> <p>19 after the accident happened?</p> <p>20 A. Yes.</p> <p>21 Q. And when he had the original injury, the</p> <p>22 records indicate that he was struck in the side of the</p> <p>23 face and had an injury to his jaw. And it looks like</p> <p>24 he lost some teeth as a result of that injury. Is</p> <p>25 that correct?</p>

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1 A. His jaw was broken in three places, one on
2 each side, down in the front chin area. He lost all
3 the front top teeth and the bone that goes in between
4 your teeth and your nose, yes.

5 Q. Okay. And in addition to that or separate
6 from that, did he suffer any other injuries as a part
7 of that accident; in other words, any other broken
8 bones? Or even if they weren't broken, any other
9 injuries that you noticed, because you knew him, you
10 know, his leg hurt him after that or his back hurt him
11 after that, anything like that?

12 A. Besides the general discomfort of being hit
13 by a car, being sore all over, no.

14 Q. And that may have been a poor question. I
15 don't mean just in the few days afterwards. I mean, I
16 will have other questions about his longer-term
17 chronic pain, but I'm interested in whether there was
18 any other sort of chronic pain that he had that you
19 attributed to the accident, such as if, you know, from
20 then on his elbow hurt him every week or his knee was
21 never the same after that or his back would bother him
22 every couple of months or anything like that aside
23 from the traumatic injury to his jaw. Was there
24 anything --

25 A. To his face, no.

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1 Q. And he had surgery right after the accident
2 in the hospital. Do you remember that?

3 A. Uh-huh.

4 Q. And then he had a second surgery
5 approximately two years later, a year and a half
6 later. And where was that?

7 A. That was at Providence.

8 Q. Okay. And that was jaw surgery?

9 A. That was a jaw replacement.

10 Q. Okay. And what was your understanding as to
11 what was done in that surgery?

12 A. They replaced his jaw. The one side was
13 completely broken. It hadn't healed in a year and a
14 half, and so they -- we went and had an outside
15 consult. And he said that you need a jaw replacement.
16 So they put a titanium jaw in.

17 Q. And so after the initial surgery, when he
18 had the car accident, he continued to have some
19 problems with his jaw?

20 A. Continually, yes.

21 Q. And can you tell me: What were the nature
22 of the problems that he had?

23 A. The nature of the problems -- basic pain,
24 you know.

25 Q. What hurt and where did it hurt? How did --

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1 A. His jaws. His jaws would continually hurt
2 and ache.

3 MS. McCREADY: Is this before the surgery?
4 I'm sorry. Are you asking before --

5 MR. GUARINO: I'm talking about after the
6 accident --

7 MS. McCREADY: And before the --

8 MR. GUARINO: -- but before the replacement
9 surgery.

10 MS. McCREADY: Okay. Thank you. I'm sorry.

11 MR. GUARINO: Sorry. I understand he had
12 the accident, had the surgery, but he had continuing
13 problems after that, so I would like --

14 MS. McCREADY: Got it.

15 THE WITNESS: Up until the second surgery,
16 replacement jaw?

17 BY MR. GUARINO:

18 Q. Correct.

19 A. Okay. Yeah. Yeah. He had continuous --
20 you know, for -- he had his jaw wired shut for quite a
21 while, and so, you know, he couldn't eat. He lost a
22 lot of weight. He had continual pain in his jaws
23 because it was supposedly healing.

24 Q. But it still hurt?

25 A. Yes.

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1 Q. And was it on both sides of his jaws that
2 hurt?

3 A. Yes.

4 Q. Okay. Anywhere else that it would hurt?

5 A. You know, not hurt -- he had a thing on his
6 lip that they never figured out what it was, but it
7 would swell up. There was no rhyme or reason of why
8 or what would make it swell up, but it would swell up
9 to a rock-size thing. So other than that, no.

10 Q. And then he had this -- he had the second
11 surgery at Providence to have his implant. Now, did
12 he continue to have problems even after that?

13 A. Yeah. He had some pain after that.

14 Q. And what type of pain did he have after
15 that?

16 A. He had pain in his jaw still. It was just
17 the --

18 Q. Let me show you a record that I have got.

19 MR. GUARINO: If I can have that marked,
20 please.

21 (Exhibit 16 marked.)

22 BY MR. GUARINO:

23 Q. And I'm going to ask you to take a look at
24 that and I'm going to ask you a few questions about
25 that in a few minutes, Ms. Allen. Before I get to

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<p>1 that, after the first surgery, did Todd have to take</p> <p>2 pain medication in order to deal with the pain that he</p> <p>3 was having?</p> <p>4 A. Yes.</p> <p>5 MS. McCREADY: And just to clarify, when you</p> <p>6 say "after the first surgery," right after the</p> <p>7 accident?</p> <p>8 MR. GUARINO: Right after the -- yeah.</p> <p>9 That's why I'm using -- first surgery was right after</p> <p>10 the accident. Second surgery was this jaw implant</p> <p>11 that we have been -- I hope I have been using that</p> <p>12 consistently up till now.</p> <p>13 MS. McCREADY: Yes.</p> <p>14 BY MR. GUARINO:</p> <p>15 Q. Okay. After the first surgery, Todd was</p> <p>16 using pain medication?</p> <p>17 A. Yes.</p> <p>18 Q. And where would he get that pain medication</p> <p>19 from? ANMC?</p> <p>20 A. Correct.</p> <p>21 Q. All right. And I don't want to go through</p> <p>22 all the records from ANMC. We have produced them in</p> <p>23 the case, and we have them. If I wanted to know what</p> <p>24 medications he was taking and how often he was taking</p> <p>25 them, would those be a better record than your</p>	<p>1 refill?</p> <p>2 A. Generally, yes.</p> <p>3 Q. I guess I'm just trying to get a sense. So</p> <p>4 if he's going in to get a refill, it means he ran out</p> <p>5 of the prescription and now was getting new</p> <p>6 medication. Is that correct?</p> <p>7 A. Yeah. It means he ran out, and he was in</p> <p>8 pain.</p> <p>9 Q. All right. And do you know what types of</p> <p>10 medications he was taking?</p> <p>11 A. Pain medicine.</p> <p>12 Q. Again, would the medical records be better</p> <p>13 to identify the specific types of medication than you</p> <p>14 would, your memory would be?</p> <p>15 A. At this point, yes.</p> <p>16 Q. Could you take a look at that the exhibit?</p> <p>17 I'm going to have a few questions to ask you about,</p> <p>18 and I would like you to have a chance to look through</p> <p>19 it first. And as you look through it, my first</p> <p>20 question will be: Do you recognize this, or have you</p> <p>21 seen it before?</p> <p>22 A. I will have to get my glasses.</p> <p>23 Q. Sure.</p> <p>24 A. And the question is, have I --</p> <p>25 Q. Well, I'm going to ask you a couple of</p>
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<p>1 recollection now, sitting here, trying to figure out</p> <p>2 how often did he take oxycodone or Percocet, in terms</p> <p>3 of the records? Would the records be a better</p> <p>4 recollection, or do you think you would have a better</p> <p>5 recollection of how much medication he was taking?</p> <p>6 A. Of how much he was actually taking or what</p> <p>7 he was given?</p> <p>8 Q. Well, I guess, let me ask that. The records</p> <p>9 document that he was getting refills of medication a</p> <p>10 number of times, and so I guess first is: Do you know</p> <p>11 how often he was getting his medication refilled?</p> <p>12 A. Well, the records would be a better</p> <p>13 indication of that.</p> <p>14 Q. Okay. How about in terms of how much</p> <p>15 medication he was taking? Would he normally use up a</p> <p>16 prescription and then go get a refill?</p> <p>17 A. No. Todd would take the prescription -- he</p> <p>18 would take his medicine when he needed it, but not --</p> <p>19 he would follow the directions on it. You know,</p> <p>20 normally it would say four to six hours, and he would</p> <p>21 not go -- you know, say like two hours later, "Oh, it</p> <p>22 didn't work" and take another one. He would not do</p> <p>23 that. He would wait till the four hours...</p> <p>24 Q. But in terms of getting a refill, he would</p> <p>25 use up a prescription before he would then get a</p>	<p>1 questions to see if you can identify this. The first</p> <p>2 would be whether you have seen this before and know</p> <p>3 what it is. And then I will ask you whether you can</p> <p>4 identify any of the writing on this or whether you can</p> <p>5 identify Mr. Allen's signature, anything like that.</p> <p>6 But I want you to have a chance to look at it first.</p> <p>7 A. Yeah. I don't remember ever seeing this,</p> <p>8 no.</p> <p>9 Q. Do you recognize the writing on the</p> <p>10 document? Is that Mr. Allen's handwriting?</p> <p>11 A. Yes.</p> <p>12 Q. And there are -- if you look at the Bates</p> <p>13 stamp numbers on the lower left-hand corner, if we</p> <p>14 start on the first page of the document, do you see</p> <p>15 that? There's patient, Todd Allen, and then some</p> <p>16 names underneath that.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Is that Mr. Allen's handwriting or printing</p> <p>19 for his name?</p> <p>20 A. For Todd's name?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And how about the signature of Todd</p> <p>24 Allen? Is that his signature?</p> <p>25 A. Yes.</p>

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1 Q. And I'll represent to you that this is a
2 document that came from ANMC that was a record of his
3 contract with ANMC to enter the chronic pain program.
4 Do you have a recollection that Todd was in the
5 chronic pain program at ANMC?

6 A. Yes.

7 Q. And I apologize. I'm sure I'm going to slip
8 at times and call him Todd versus Mr. Allen. I mean
9 no disrespect here. It's just that I have been
10 looking at this so long that I may slip back and
11 forth. So I don't mean to be familiar with him, I
12 didn't know him, but --

13 A. Okay. Thank you.

14 Q. So you were aware he was in the chronic pain
15 program?

16 A. Yes.

17 Q. And was that generally for this -- what I
18 have seen referred to as the TMJ pain problem in his
19 jaw?

20 A. Was the jaw pain, yes.

21 Q. Did you know that Todd had filled out this
22 document for ANMC?

23 A. He told me he had to fill out a document,
24 yes.

25 Q. Did you ever review it for him?

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1 A. No.

2 Q. Did he talk to you about what information he
3 put into the document?

4 A. No. He just said he had to fill one out.

5 Q. Okay. As far as you know, would there have
6 been any reason why Todd would have put either false
7 or not accurate information in this document?

8 A. Not to my knowledge, no.

9 Q. Okay. And if you could turn to the stamped
10 page. It would be ANMC 166. Under -- it would be box
11 number 19. It says, "What is the most stressful thing
12 in your life right now?" My reading of that, and you
13 can correct me if you can see -- understand his
14 printing better: "For (sic) frequent pain of TMJ due
15 to an incident I was involved" -- maybe that's
16 "involved in." Does that seem like a fair reading to
17 you?

18 A. Yes. But I think it's "the," the frequent
19 pain.

20 Q. "The frequent pain." Okay. "The frequent
21 pain of TMJ due to an incident" maybe "I was
22 involved" -- maybe he meant to say "in."

23 I have assumed that that referred to this
24 car accident that we talked about. Would that be your
25 understanding?

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1 A. Yes.

2 Q. He didn't have any other major trauma to his
3 jaw or anything that he attributed to be causing his
4 pain?

5 A. No.

6 Q. And if you can look at the next page. It
7 identifies the patient, Todd Allen, and identifies a
8 provider, Maria Freeman?

9 A. Uh-huh.

10 Q. Do you know who Maria Freeman is?

11 A. The name is familiar. I can't say for sure
12 who she is, though.

13 Q. And do you know whether she was a doctor for
14 Mr. Allen or a doctor at ANMC that was dealing with
15 his care?

16 A. Like I said, I know she -- the name is
17 familiar, and I believe she's a doctor, but I don't
18 know what she did for Todd.

19 Q. Can you remember ever talking to her about
20 Todd's condition?

21 A. I don't remember.

22 Q. And if there are documents in the records
23 that reflect phone calls or discussions between you
24 and ANMC, whether it was Dr. Freeman or someone else,
25 would those be a better record than your recollection

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1 as you sit here, in terms of when you called for
2 prescriptions or refills or things like that?

3 A. Yes.

4 Q. There are people listed below. There's a --
5 looks like Myra Allen. And that's Todd's mother?

6 A. Yes.

7 Q. And then there's reference to you, Kim
8 Allen, his wife. And the next one, Lloyd?

9 A. Kompkoff.

10 Q. Kompkoff?

11 A. K-o-m-p-k-o-f-f.

12 Q. And was that the individual who he lived
13 with in Valdez?

14 A. For a time, yes.

15 Q. If you can continue on, this form goes on
16 for a number of pages, and I don't want to go through
17 every one of the entries, but I am interested in
18 looking at -- starting at page stamped ANMC 173. Do
19 you see that? It says, "Chronic Pain Program, Patient
20 Initial Assessment."

21 A. Yes.

22 Q. Do you recognize -- is that Todd's printing
23 or writing on that page?

24 A. Yeah. The bottom one doesn't look like --
25 the bottom one doesn't look like his. "Sarah Carter"

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<p>1 doesn't look like his writing. "Maria Freeman"</p> <p>2 doesn't look like his writing. But the first one</p> <p>3 through six -- one through seven does.</p> <p>4 Q. So you can't say for sure whether he filled</p> <p>5 out this whole form or just part of it?</p> <p>6 A. That would be correct.</p> <p>7 Q. The description in 15a talks about the</p> <p>8 location of pain.</p> <p>9 A. Uh-huh.</p> <p>10 Q. Do you see that? And for the moment, let's</p> <p>11 leave aside the question whether Todd wrote this or</p> <p>12 whether he told someone who wrote it. But it says,</p> <p>13 right side of head, jaw, joint area, inside ear area</p> <p>14 due to TMJ pain, broken jaw.</p> <p>15 Is that consistent with your recollection of</p> <p>16 at least one of the problems that Todd was having with</p> <p>17 regard to his continuing pain?</p> <p>18 A. After the accident --</p> <p>19 Q. Well, this --</p> <p>20 A. -- or when he signed this? I mean, I don't</p> <p>21 know when he signed this.</p> <p>22 Q. Yeah. Let's get a date for this. If you</p> <p>23 look at the page before that, there's a signature of</p> <p>24 Mr. Allen in January of '03.</p> <p>25 A. Oh, okay.</p>	<p>1 The pain that he had that I was aware of was</p> <p>2 in his jaws, specifically, and more, you know, like up</p> <p>3 in the cheekbone area. The front facial area was</p> <p>4 where his pain was.</p> <p>5 Q. Did he ever talk to you about having, also,</p> <p>6 pain in the ear?</p> <p>7 A. He had pain in the front of the ear, like</p> <p>8 not -- not in the ear, but there's where your joint</p> <p>9 comes together. That clicking or -- some people, it</p> <p>10 clicks. That was where his pain would be.</p> <p>11 Q. All right. And so just so I can understand.</p> <p>12 Your recollection is the pain was in his jaw and you</p> <p>13 think also in his cheekbones, both sides?</p> <p>14 A. I don't know about both sides. One side. I</p> <p>15 can't remember which one, but I know one was more</p> <p>16 severe.</p> <p>17 Q. And also in the joint area, sort of --</p> <p>18 A. Well, yeah. You know where your</p> <p>19 cheekbone -- I don't know how to say it so you can</p> <p>20 transcribe it, but your cheekbone and then your</p> <p>21 jawbone comes up. He would have some pain in there.</p> <p>22 Q. And do you ever recall him talking about</p> <p>23 having pain also on the left side, not just the right</p> <p>24 side but also the left side?</p> <p>25 A. He had pain on both sides.</p>
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<p>1 Q. Do you see that?</p> <p>2 A. Right. Okay.</p> <p>3 Q. And then at the beginning of this, there</p> <p>4 was -- the beginning of the document has a document</p> <p>5 that's dated in -- I think, to begin with, so we can</p> <p>6 get the approximate time, if you look at the first</p> <p>7 page, there's a signature of December 12, 2002.</p> <p>8 A. Okay.</p> <p>9 Q. So it may have been filled out at two</p> <p>10 different times, but I'm talking about the general</p> <p>11 time period of late 2002, early 2003, when this</p> <p>12 document would have been prepared.</p> <p>13 A. Okay. And your question again was?</p> <p>14 Q. So now I'm --</p> <p>15 A. I'm sorry.</p> <p>16 Q. Assuming that Mr. Allen was providing this</p> <p>17 information to ANMC about what his condition was and</p> <p>18 what his status was, if we take the time period from</p> <p>19 when he had his accident, the car accident, up through</p> <p>20 now, when he was in -- going into the ANMC chronic</p> <p>21 pain program, does this description -- is that</p> <p>22 consistent with your understanding of what sort of</p> <p>23 problems he was having because of his TMJ condition?</p> <p>24 A. "Right side head, jaw joint area/inside ear</p> <p>25 due to TMJ pain, broken jaw."</p>	<p>1 Q. Okay. And I was going to turn the page next</p> <p>2 because there's another description in 15b. And this</p> <p>3 is all in Exhibit -- is this is Exhibit 16?</p> <p>4 A. Yes.</p> <p>5 Q. This is ANMC 174. He has second location</p> <p>6 where he says -- where it says, "Left side head, jaw,</p> <p>7 joint area." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Now, can you identify that printing? Is</p> <p>10 that Todd's handwriting there?</p> <p>11 A. Yes. All of 15 is Todd's writing.</p> <p>12 Q. Okay. And so he was indicating at the time</p> <p>13 that he was having problems not just on his right side</p> <p>14 but also on his left side?</p> <p>15 A. Uh-huh.</p> <p>16 Q. All right. And then below that, in 15c, he</p> <p>17 says, right side of in the ear area.</p> <p>18 Now, is that consistent with your</p> <p>19 recollection of what he was complaining about?</p> <p>20 A. As far as my definition of ear area, yes.</p> <p>21 Q. Okay. Because you're thinking somewhere in</p> <p>22 the front of his ear near --</p> <p>23 A. It's not in his ear. It's not -- it's in</p> <p>24 the front -- in front of it. You know, I can't</p> <p>25 describe it, so I'm sure he's doing his best to</p>

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<p>1 free," I would be interested in finding out</p> <p>2 information like that.</p> <p>3 And so I'm trying to find out: Do you have</p> <p>4 any specific memory where you can say, I can remember</p> <p>5 what his pain was like in December of 2002 and I know</p> <p>6 it wasn't like this? Are you able to remember --</p> <p>7 A. I can remember that Todd was always in pain,</p> <p>8 but Todd never complained about his pain. So I never</p> <p>9 knew the total severity of it. He would function</p> <p>10 normally.</p> <p>11 Q. And was that because that's just because who</p> <p>12 he was, that he wasn't a complainer, or was he trying</p> <p>13 to hide from you how badly he was hurting?</p> <p>14 A. He wasn't trying to hide anything. He --</p> <p>15 he -- it bothered him that he was in pain and didn't</p> <p>16 want to be in pain, and so he would function as if he</p> <p>17 wasn't, even though he was. He just wasn't an</p> <p>18 complainer.</p> <p>19 Q. As we sit here today, do you know whether</p> <p>20 Todd's pain suddenly changed from the way it was in</p> <p>21 the prior times, in December of 2002 and January 2003?</p> <p>22 In other words, did it suddenly become a different</p> <p>23 type of pain or a more serious type of pain or more</p> <p>24 severe in December 2002, January 2003?</p> <p>25 A. No.</p>	<p>1 Now, obviously that number could change from</p> <p>2 month to month. But is that consistent with your</p> <p>3 understanding that he had pain not just once a month</p> <p>4 or once a week, but it was more often than that over</p> <p>5 the course of the months that you lived with him?</p> <p>6 A. It was more often, yes. It was more often</p> <p>7 with the weather.</p> <p>8 Q. And in terms of flaring up, the way I</p> <p>9 understand that or I'm interpreting it -- and I'm</p> <p>10 asking you to correct me if I'm wrong -- is there</p> <p>11 would be times where it didn't hurt as bad, and then</p> <p>12 it would hurt worse for him?</p> <p>13 A. Right. The weather played a big factor in</p> <p>14 it.</p> <p>15 Q. And actually, I think if you look at the</p> <p>16 next page, he maybe documents that, if you look at</p> <p>17 ANMC 175.</p> <p>18 A. Right.</p> <p>19 Q. There's a question 21: "What sorts of</p> <p>20 things make your pain feel worse, or increases your</p> <p>21 pain?" And it looks like he said, "Long days of</p> <p>22 laborious work, cold, freezing weather." Is that what</p> <p>23 you meant?</p> <p>24 A. Uh-huh. That's what he meant, yes.</p> <p>25 Q. And "traveling through" -- I'm interpreting</p>
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<p>1 Q. Not as far as you knew?</p> <p>2 A. Not as far as I know, no.</p> <p>3 Q. And so to the extent he is describing his</p> <p>4 pain in this document, to your understanding, that</p> <p>5 would be sort of the way his pain was in all of the</p> <p>6 years prior to that between the accident and up to</p> <p>7 this time?</p> <p>8 A. Like I said, he didn't ever, you know,</p> <p>9 continually tell me what his -- I would say that this</p> <p>10 is consistent with the pain that he had.</p> <p>11 Q. And I guess what -- and I may be asking this</p> <p>12 inartfully, but it's hard for me to ask you about his</p> <p>13 recollection. But I'm trying to get a sense of</p> <p>14 whether something happened in December of 2002 that</p> <p>15 suddenly made his pain completely different. It made</p> <p>16 it much worse.</p> <p>17 A. Oh, I understand your question, yes.</p> <p>18 Q. Anything like that?</p> <p>19 A. No. There was nothing significant that</p> <p>20 happened to differentiate. There was never any change</p> <p>21 in his talking about his pain from, you know, the time</p> <p>22 of the joint replacement to this time.</p> <p>23 Q. How about in terms of -- he talks -- or he</p> <p>24 wrote in number 17, "Frequency of pain flares during</p> <p>25 the last month." We have an estimate, 16.</p>	<p>1 that to be mountains.</p> <p>2 A. Yeah. When he traveled through the</p> <p>3 mountains, he would get -- not necessarily a lot of</p> <p>4 pain, but he would get pressure. It would create</p> <p>5 pressure in his head.</p> <p>6 Q. And where would the pressure be?</p> <p>7 A. The pressure would be in his jaws. It would</p> <p>8 be -- just pressure was what he, you know, explained</p> <p>9 it to me. He didn't really talk about it a lot,</p> <p>10 because that was part of how he got to work. It was</p> <p>11 something he had to do, was drive across the mountains</p> <p>12 every week.</p> <p>13 Q. When he was driving from Anchorage to</p> <p>14 Valdez, he would be traveling through the mountains?</p> <p>15 A. Correct.</p> <p>16 Q. And that would increase this pressure that</p> <p>17 he felt?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Were there ever -- in terms of</p> <p>20 these flare-ups, were there ever times where he was</p> <p>21 pain free and then the pain would get much worse?</p> <p>22 A. I guess I'm not understanding what you're</p> <p>23 asking.</p> <p>24 Q. Well, I'm trying to get a sense of this idea</p> <p>25 of the pain flaring up, and you said there were times</p>

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1 where he would be in pain but it would get worse at
2 times. And so that would be some of these flare-ups.
3 Were there ever times where he was actually pain-free,
4 and then the pain would come back and flare up?

5 A. Well, right. Like he said, you know, the
6 flare-ups, he would be in pain and then -- it would be
7 the weather. If he was working outside -- like I say,
8 he worked on a boat. And in Valdez in the winter,
9 it's extremely cold. And there's a lot of north wind.
10 So that would affect the pain in his jaw, make it
11 worse.

12 Q. And in terms of being able to figure out how
13 severe his pain was or how often he had pain, I guess
14 is this record of information that he provided, would
15 that be a better record than you trying to figure out
16 now and say what his pain was like back in 2002 and
17 2003? Is this a better source of information than
18 your memory, at this point?

19 A. I can't answer that.

20 Q. All right. If you look at the next page,
21 ANMC 175.

22 A. Uh-huh.

23 Q. There's a reference, after he talks about,
24 in question 22, the things that makes him feel worse,
25 and then he talks about having a broken jaw from the

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1 auto accident. But then below that he talks about
2 providers, and he identifies a Dr. Todd in Valdez.

3 A. Okay.

4 Q. Do you know who Dr. Todd is?

5 A. No. I mean, the name is familiar, but I
6 don't know.

7 Q. Do you know if he ever went to see a
8 Dr. Todd in Valdez to get treatment for his TMJ or his
9 pain?

10 A. I don't know the answer to that. The
11 records would be a better --

12 Q. Okay. And actually, I may -- let's see
13 here.

14 A. I know he went to -- I know he went in there
15 once, I think, for pain.

16 Q. I'm going to have to look through these. I
17 have got some releases to try and get records, because
18 we don't have any records from Dr. Todd in Valdez that
19 I know of. Or I'm not sure we have complete records.
20 And so before we leave today, I will give you some of
21 the releases to look at and send us back.

22 MS. MCCREADY: You should have signed
23 releases for Kim.

24 MR. GUARINO: I asked my -- but I don't know
25 whether we have them for Valdez or not, because I

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1 asked my paralegal to check. I could be wrong, but
2 I'm asking her to check.

3 Q. But you don't recall Todd talking about
4 going in to see Dr. Todd?

5 A. I recall him talking about going to a
6 doctor. I don't know which doctor it was.

7 Q. Okay. And --

8 A. I'm sorry. Could we take a break so I can
9 go to the bathroom?

10 MR. GUARINO: Oh, sure.

11 (Recess taken.)

12 BY MR. GUARINO:

13 Q. Ms. Allen, going back to Exhibit 16. If you
14 take a look at that patient initial assessment that we
15 have been looking at with all the numbered questions,
16 if you go all the way to the end -- it goes all the
17 way to page ANMC 179. It finishes up with 31d, and
18 then there's Mr. Allen's signature. Do you see that?

19 A. Yes.

20 Q. Assuming he signed that on January 11th,
21 2003 -- now, this is after the first surgery that he
22 had right after the accident, and it's after the
23 second surgery, where he had the implant put in,
24 because that was in 2001, correct?

25 A. Correct.

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1 Q. So he's indicating -- or he indicated at
2 that time that even after those two surgeries, he was
3 still having continuing problems with pain.

4 A. Yes, he was.

5 Q. All right. And you indicated that he seemed
6 to be able to handle it and that he was still able to
7 work even though he had pain, correct?

8 A. He didn't seem to be. He did.

9 Q. He did. And I'm just trying to get a
10 sense -- in looking at the way he described it,
11 though, it seemed at times the pain was pretty severe
12 for him.

13 A. At times it was, yes.

14 Q. I mean, he says at times it was a ten,
15 meaning the worst pain he could -- according to the
16 scale, the worst pain he could imagine.

17 A. Right.

18 Q. And then the words he used at times that it
19 was aching or sharp. If you look at page ANMC 174,
20 where he circled the words to describe his pain.

21 A. Right.

22 Q. And there are times where he referred to it
23 as unbearable and other times where it was miserable
24 or aching or throbbing. I don't expect you to be able
25 to say how many times it was any of these, but a fair

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<p>1 reading of this would be that at times he had pretty 2 severe pain because of this?</p> <p>3 A. At times he did, but the times that he did 4 have that pain was usually after work, when it was the 5 severe weather which contributed to it.</p> <p>6 Q. And let me ask you a few questions about 7 that. So your understanding was outdoor conditions or 8 work could contribute to this pain and worsen it?</p> <p>9 A. Not work, but the outdoor conditions.</p> <p>10 Q. Was there anything else that you would 11 notice that would trigger an increase in his symptoms, 12 increase pain or a flare-up of his pain?</p> <p>13 A. Not that I noticed, no.</p> <p>14 MR. GUARINO: Let's go off record for a 15 second.</p> <p>16 (Discussion off record.)</p> <p>17 MR. GUARINO: Let's go back on record.</p> <p>18 Q. There were some visits that are in the 19 record, visits to ANMC that are documented after 20 this -- after Todd went into this chronic pain program 21 and filled out this form in early 2003. And I don't 22 want to go through all of them but there are a couple 23 I wanted to ask you about.</p> <p>24 And maybe -- let me preface this. There are 25 hundreds of records showing different visits that Todd</p>	<p>1 long time for me going day by day: Do you remember 2 this day, and did he really have pain in his jaw that 3 day, or how bad was the pain? I have taken the 4 records to be generally accurate, unless you can tell 5 me, oh, no, I have a different recollection of that. 6 And so I don't want to spend the time going through 7 day by day in the records unless you're going to make 8 me by saying, oh, I have looked at the records, and I 9 can tell you they're not accurate. They don't reflect 10 the visits that he had, and they don't reflect the 11 pain that he was feeling. I mean, that's the 12 choice --</p> <p>13 MS. McCREADY: Well, certainly that's the 14 visit of April 19, '03. Obviously, that's going to be 15 an issue, that day. I'm just saying Mrs. Allen hasn't 16 reviewed all these prior records, except for the day 17 of the 19th. And so to ask her to sanctify the record 18 and say everything that ANMC providers wrote down in 19 the however many years he's been treated there -- do 20 you see -- I mean, I just think that that's something 21 that -- she can't even answer that.</p> <p>22 MR. GUARINO: And that's fine. I guess the 23 only question I have got, if it comes down to time -- 24 let's go off record for a second.</p> <p>25 (Discussion off record.)</p>
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<p>1 had. For any particular visit, leaving aside for the 2 moment the visit on April 19th, the last visit to 3 ANMC, but the earlier visits where Todd would show up, 4 do you think you got a specific recollection, as we 5 sit here, of those visits? In other words, you can 6 say, oh, I remember on February 2nd we went to ANMC, 7 and we picked up this medication and here's the 8 discussion we had? Or would it be better to just look 9 at the records to see what happened on that particular 10 day or who was there, whether it was you or Todd or 11 whether there was a refilled medication or what the 12 symptoms were?</p> <p>13 A. My answer would be: When I went with Todd, 14 which was most often all the time, I remember the 15 visits. But like you said, there's over a hun- -- I 16 mean, there was a lot of them. So I could not put the 17 date to the specific visit, but I have a recollection 18 of visits.</p> <p>19 MS. McCREADY: And my only objection to this 20 line of questions about: Do the records better 21 reflect -- I mean, I don't think Mrs. Allen can 22 testify about whether or not the records are accurate 23 or whether or not they accurately reflect exactly what 24 happened in the visits.</p> <p>25 MR. GUARINO: Well, I guess we can be here a</p>	<p>1 MR. GUARINO: Let's go back on the record.</p> <p>2 Q. Let me try with one record and sort of get 3 an idea of what your recollection is. I'm not going 4 to mark this as an exhibit, because it's already 5 marked with a production number. This was produced by 6 plaintiff as Allen, parentheses, ANMC 32. And it's 7 also got my office Bates number of ANMC 183. It's a 8 visit for January 23rd, 2003. You will see it at the 9 bottom of the page.</p> <p>10 A. Okay.</p> <p>11 Q. And so get a chance to look at this, 12 Ms. Allen. The first question I had is whether you 13 recall if you attended this or were with Mr. Allen 14 when he had this visit.</p> <p>15 A. I don't have a recollection whether I was 16 with him or not.</p> <p>17 Q. Okay. And, for example, the record 18 documents that Mr. Allen was complaining of an 19 increase in pain in his right jaw four to five days 20 ago. And then below that: Bilateral ear pain, sharp.</p> <p>21 Do you have any recollection that Mr. Allen 22 had some sort of increase in pain in his right jaw in 23 January 2003, something that was different than what 24 he had been experiencing before?</p> <p>25 A. You know, just looking at this record, I</p>

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<p>1 Q. Do you ever remember him saying any problems</p> <p>2 in terms of his inner ear, either balance or problems</p> <p>3 with him being able to hear or being irritated by a</p> <p>4 feeling or a sound or a noise in his ear, anything</p> <p>5 like that?</p> <p>6 A. No. I mean, the only thing that could be --</p> <p>7 you know, when he was dizzy right after the surgery.</p> <p>8 Sometimes his inner ear affected him. But that was</p> <p>9 only for a short period of time after the surgery.</p> <p>10 Q. And then the next sentence in Dr. Craig's</p> <p>11 report says, "Coincidentally, the patient had his</p> <p>12 hearing tested before the accident through the</p> <p>13 workplace. Post-injury testing suggests a decline in</p> <p>14 hearing."</p> <p>15 Do you recall Mr. Allen ever talking to you</p> <p>16 about having his hearing tested and about him having a</p> <p>17 demonstrated decline in his hearing?</p> <p>18 A. No.</p> <p>19 Q. So some of this information that he talked</p> <p>20 to Dr. Craig about he may not have talked to you</p> <p>21 about?</p> <p>22 A. That would be correct.</p> <p>23 Q. If you could go down to the -- and I don't</p> <p>24 mean to skip over these. There are only some issues</p> <p>25 that I'm interested in spending time in the deposition</p>	<p>1 One would be working on the front of his jaw and the</p> <p>2 teeth, and the second possible surgery would be this</p> <p>3 replacement of the implant?</p> <p>4 A. Most likely, yes.</p> <p>5 Q. Had you gotten far enough to where you</p> <p>6 actually had a time or a potential date as to when he</p> <p>7 was going to have this surgery on the front of his</p> <p>8 face?</p> <p>9 A. That's what we were in the process of</p> <p>10 working on, yes. We did not have a specific time or</p> <p>11 date, but we were working on getting that.</p> <p>12 Q. And which doctor was he going to see for</p> <p>13 that?</p> <p>14 A. We were trying to get Dr. Edwards to do it.</p> <p>15 Q. He was the doctor at Providence who did the</p> <p>16 implant surgery?</p> <p>17 A. He was not affiliated with Providence. He's</p> <p>18 an outside physician who used Providence --</p> <p>19 Q. Poor question. But he was the surgeon who</p> <p>20 did the surgery at Providence that did the implant,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. All right. Any other surgeries that you</p> <p>24 thought Todd might need in connection with his jaw</p> <p>25 problem? We have talked about two. Are there any</p>
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<p>1 on. So if there's something you want to fill in, go</p> <p>2 ahead.</p> <p>3 But I'm going to skip down to the next</p> <p>4 paragraph. He talks about medications but then, at</p> <p>5 the bottom of that next paragraph, he says, "He stated</p> <p>6 that significant damage was incurred in the jaw area,</p> <p>7 and that more surgery will be required."</p> <p>8 Now, assuming that this was after the second</p> <p>9 surgery, was it your understanding that Todd might</p> <p>10 need more surgery even after the implant?</p> <p>11 A. Yes.</p> <p>12 Q. How concrete did those plans become? Did</p> <p>13 you know what type of surgery or how extensive it was</p> <p>14 going to be?</p> <p>15 A. Yes, we did.</p> <p>16 Q. Can you tell --</p> <p>17 A. He had no bone up in the top part. They</p> <p>18 were going to do -- well, at the time, they thought</p> <p>19 take some bone from his hip area and put it up here.</p> <p>20 And then do teeth up in here. And then the titanium</p> <p>21 jaw -- I hate to say shelf life, but the basic life of</p> <p>22 that is about 15 years. And since he was so young, he</p> <p>23 would have had to have had another replacement</p> <p>24 sometime during his lifetime.</p> <p>25 Q. And those would be two different things.</p>	<p>1 others?</p> <p>2 A. Not that I can think of.</p> <p>3 Q. And just so I can close it off, did you ever</p> <p>4 talk to Dr. Craig? Even if it wasn't right at the</p> <p>5 time that he evaluated Mr. Allen, did you ever talk to</p> <p>6 him later?</p> <p>7 A. Not that I remember.</p> <p>8 Q. Okay. One other reference in the report.</p> <p>9 If you would turn to what would be the Allen(ANMC)-62.</p> <p>10 There's a -- in the one -- looks like about the fourth</p> <p>11 paragraph down, it says "occupationally." Do you see</p> <p>12 that paragraph?</p> <p>13 A. This right here?</p> <p>14 Q. I'm not going to ask you a lot of questions</p> <p>15 about that, but is that the work that Todd was doing</p> <p>16 that you have talked about previously, where he was</p> <p>17 working in Valdez and driving down there to work week</p> <p>18 on, week off?</p> <p>19 A. Yes.</p> <p>20 Q. Did Todd ever talk to you about having pain</p> <p>21 in his neck associated with his jaw pain?</p> <p>22 A. In his neck?</p> <p>23 Q. Yes.</p> <p>24 A. No.</p> <p>25 Q. And so if there are medical records that</p>

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1 document him talking to a health care provider about
2 pain not just in his jaw but in his neck, you don't
3 know anything about that?

4 A. No.

5 Q. Same thing. If any of the records indicate
6 there are times where he talked about having pain in
7 his head as opposed to specifically just his jaw, do
8 you know anything about that, in terms of how far the
9 pain extended up into his head or where on his head it
10 hurt?

11 A. What was the question again? I'm sorry.

12 Q. Poor question. I apologize. To the extent
13 that the records document that he at times complained
14 of pain in his -- for example, what he reported to
15 Dr. Craig, where he talked about pain throughout his
16 head, or in other parts of the records where there are
17 references to pain in his jaw or his head or his ear,
18 do you know anything about how far it extended into
19 his head or where in his head it would have hurt him?

20 A. Not to my recollection.

21 Q. So for example, in the document that's been
22 marked as an exhibit already, Exhibit 16, where we
23 have the figures where Todd was -- Mr. Allen was
24 documenting the location of his pain, you don't know
25 what he was referring to when he circled the area and

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1 Q. And you drove the whole way?

2 A. Todd did.

3 Q. How many hours did it take to drive?

4 A. I don't know exactly, but the average drive
5 time from Valdez to Anchorage is about five and a half
6 hours.

7 Q. Okay. And did you arrive in Anchorage in
8 the early evening, late evening?

9 A. It was later evening.

10 Q. And why were you coming to Anchorage on that
11 trip?

12 A. To get some -- the final stuff out of our
13 storage, to move it back to Valdez.

14 Q. So this was going to be a temporary stay in
15 Anchorage?

16 A. Yeah. It was a weekend trip up.

17 Q. And what did you do when you got to
18 Anchorage? Where did you go?

19 A. When we --

20 Q. That night, where did you go?

21 A. When we got to Anchorage, we met up with his
22 friend who had picked up his medicine from ANMC.

23 Q. And who was that?

24 A. Unfortunately, I can't recall his name. I'm
25 sorry.

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1 put an X in the back of the head near the neck?

2 A. No, I'm not aware of it.

3 Q. I would like to go now to the day -- day or
4 days just prior to Mr. Allen's visit to ANMC on
5 April 19th. And to kind of set the context, my
6 understanding was that at some point prior to
7 April 19, and the day or days before that, Mr. Allen
8 drove up from Valdez to Anchorage?

9 A. Days prior to?

10 Q. Yes. Before -- you were at ANMC on
11 April 19th.

12 A. Oh, right.

13 Q. In the days prior to that, a day, two days,
14 a week, sometime prior to that, Mr. Allen --

15 A. The 18th.

16 Q. The 18th?

17 A. The 18th Todd and I drove up to Anchorage.

18 Q. Okay. And so you were both down in Valdez
19 and you both drove together up to Anchorage?

20 A. Correct.

21 Q. When did you drive? I want to try and take
22 this carefully. When did you leave Valdez?

23 A. Afternoon sometime.

24 Q. On the 18th?

25 A. Correct.

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1 Q. Where did you meet the friend?

2 A. We met him at that McDonald's on Tudor.

3 Q. Did you know he was going to be there with
4 the medication?

5 A. Yeah. Yeah.

6 Q. Had you called to ANMC to refill the
7 medication earlier that day?

8 A. Todd had, yeah. Todd had set it up.

9 Q. And was this pain medication?

10 A. Correct.

11 Q. And was this a normal refill of the
12 medication or was this a special prescription?

13 A. It was his normal refill of whatever his
14 prescriptions were.

15 Q. Okay. And so the friend picked it up for
16 him and then you got it from the friend?

17 A. Correct.

18 Q. How long were you with the friend?

19 A. Five minutes.

20 Q. Did you eat at McDonald's or just meet him
21 and then leave?

22 A. We just met him in the parking lot.

23 Q. Did you make any stops on the trip between
24 Valdez and Anchorage? Did you stop along the way?

25 A. No.

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<p>1 Q. Did you stop for meals?</p> <p>2 A. No.</p> <p>3 Q. All right. After you met this friend, where</p> <p>4 did you go next?</p> <p>5 A. We went to the Microtel.</p> <p>6 Q. Did you know you were going there before?</p> <p>7 Had you made a reservation?</p> <p>8 A. I don't know if we made a reservation or</p> <p>9 not, but we had stayed there a few times. They always</p> <p>10 have rooms available.</p> <p>11 Q. All right. And then once you got there,</p> <p>12 what did you do next? Did you stay in the hotel that</p> <p>13 night, or did you go out?</p> <p>14 A. We stayed in the hotel.</p> <p>15 Q. Did you see anyone else that evening?</p> <p>16 A. No.</p> <p>17 Q. Did Todd have any -- I apologize again.</p> <p>18 Mr. Allen, Todd, did he have any problems during the</p> <p>19 drive up from Valdez?</p> <p>20 A. No. Just the normal pressure in his head --</p> <p>21 in his jaws. Excuse me.</p> <p>22 Q. Did the driving through the mountains seem</p> <p>23 to affect him as it had in the past with this increase</p> <p>24 in pressure?</p> <p>25 A. From the previous times that I have been</p>	<p>1 A. I don't believe he ever slept. He woke me</p> <p>2 up at 6:00 a.m., saying he hadn't slept all night and</p> <p>3 that we had to go to the hospital right now.</p> <p>4 Q. Okay. And what did he say then?</p> <p>5 A. He said, "We have to go to the hospital</p> <p>6 right now."</p> <p>7 Q. And what was he complaining about?</p> <p>8 A. He said his head hurt.</p> <p>9 Q. Anything else?</p> <p>10 A. No. We got dressed and left.</p> <p>11 Q. Did he tell you where on his head had hurt?</p> <p>12 A. Not at that time. On the drive to, he did.</p> <p>13 Q. So let's take this one at a time. He woke</p> <p>14 you up and says, we have to go to the hospital. My</p> <p>15 head hurts.</p> <p>16 A. He said, "Get up. We have to go to the</p> <p>17 hospital right now. My head hurts."</p> <p>18 Q. Okay. And he hadn't talked with you at all</p> <p>19 before that but it was now in the morning?</p> <p>20 A. It was 6:00 o'clock in the morning.</p> <p>21 Q. And you looked at the clock and saw that?</p> <p>22 A. Yeah.</p> <p>23 Q. Did you call ANMC before you went there?</p> <p>24 A. No.</p> <p>25 Q. And so you got dressed and got in the car</p>
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<p>1 with him, it was the same. It was the same pressure.</p> <p>2 It was a good drive. It was actually a very nice</p> <p>3 drive.</p> <p>4 Q. I'm just trying to get a sense. You said</p> <p>5 there were times where driving through the mountains</p> <p>6 caused this increase in pressure.</p> <p>7 A. That I noticed.</p> <p>8 Q. Did that happen on this occasion, too?</p> <p>9 A. Yeah.</p> <p>10 Q. Any other complaints or problems that Todd,</p> <p>11 Mr. Allen, raised during this trip?</p> <p>12 A. No.</p> <p>13 Q. Any problems that you had during the trip?</p> <p>14 A. No.</p> <p>15 Q. And then you were at the hotel. And did you</p> <p>16 both go to bed at the same time?</p> <p>17 A. No. I went to bed. I was tired. He stayed</p> <p>18 up.</p> <p>19 Q. Do you know what he was doing when he stayed</p> <p>20 up?</p> <p>21 A. No. I was sleeping.</p> <p>22 Q. Do you know what time he finally came to</p> <p>23 bed?</p> <p>24 A. He -- no. He never did.</p> <p>25 Q. Was it after midnight?</p>	<p>1 and went to ANMC?</p> <p>2 A. Correct.</p> <p>3 Q. Who drove?</p> <p>4 A. I did.</p> <p>5 Q. And what did he tell you during the drive?</p> <p>6 You said he told you some more about this. What did</p> <p>7 he tell you?</p> <p>8 A. He said it was a different pain. He said it</p> <p>9 wasn't jaw pain. And I could see that he was in pain.</p> <p>10 And from the fact that he was telling me he was in</p> <p>11 pain was -- contradicted out all the other incidents,</p> <p>12 going to the emergency room. He said it came from the</p> <p>13 back of his neck and radiated up to the top of his</p> <p>14 head.</p> <p>15 Q. Did he give you any indication of how severe</p> <p>16 the pain was?</p> <p>17 A. He said it hurt a lot.</p> <p>18 Q. And did he tell you anything else, in terms</p> <p>19 of his symptoms or where it hurt or what hurt?</p> <p>20 A. Like I said before, it came from the back of</p> <p>21 his head up to the top of his head, from the back of</p> <p>22 his neck to the top of his head.</p> <p>23 Q. Did he tell you when it started?</p> <p>24 A. No.</p> <p>25 Q. Did he have any other symptoms? And I mean</p>

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1 Q. Okay. And anything else you can recall, in
2 terms of the complaints that Mr. Allen voiced or
3 symptoms that he talked about, that you haven't talked
4 to up to this point?

5 A. No.

6 Q. And in your mind, am I correct in
7 understanding that as far as your recollection is, is
8 that Mr. Allen would have told both the first person
9 that he talked to, the person you thought was a nurse,
10 and the second person, the person that you thought was
11 a doctor, would have told both of them about this pain
12 in his neck and head?

13 A. Correct.

14 Q. And would have told both of them about his
15 nausea and vomiting?

16 A. Correct.

17 Q. And would have told both of them your
18 understanding that this was different than his prior
19 pain?

20 A. Correct.

21 Q. And just so I -- it sounds like you don't
22 recall talking or saying anything to either one of
23 them, in terms of giving them more information?

24 A. I don't recall, no.

25 Q. All right. Was there any discussion with

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1 either the first, the nurse, or the second person that
2 Mr. Allen talked to about the fact that he was in the
3 chronic pain program?

4 A. The second one.

5 Q. And what did they discuss about that?

6 A. Well, like I said, they didn't have his
7 chart, so he explained that he was in the chronic pain
8 program and that he had just received his refills the
9 prior day.

10 Q. Okay. And did they talk about what
11 medications he was on?

12 A. I believe so, yes.

13 Q. Anything else that they talked about in
14 terms of the chronic pain program?

15 A. Not that I recall, no.

16 Q. What happened next?

17 A. She said that she would give him a shot for
18 nausea and that he would -- and then give us something
19 to take home, for him to take home; and that if the
20 pain persisted or became worse, to see a doc -- you
21 know, see the doctor or come back.

22 Q. I just want to make sure I'm following this.
23 She prescribed a shot of something for the nausea?

24 A. Phenergan, if I have the name right, yes.

25 Q. Did this second person give him the shot?

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1 A. No.

2 Q. And then she said she was going to give him
3 some more of the Phenergan or --

4 A. A prescription for it.

5 Q. A prescription, okay. And what was the
6 third thing she said about if --

7 A. If it gets worse.

8 Q. To do what?

9 A. To come back.

10 Q. And then did this second person then leave?

11 A. Yes.

12 Q. Did you ever see that person again while you
13 were at ANMC?

14 A. No.

15 Q. Okay. What happened next?

16 A. We waited some more, and then the first
17 person came back, gave Todd the shot, and gave us the
18 prescription and our papers to go.

19 Q. This was the person that you talked to the
20 first time, the nurse?

21 A. Right.

22 Q. It was the same person, then, came back and
23 gave you the shot?

24 A. Yes.

25 Q. Did you have any further discussion with

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1 this nurse about Mr. Allen's symptoms or what he was
2 complaining about or anything like that?

3 A. No. She just talked about the shot and said
4 it would make him drowsy, which I believe the
5 doctor -- or whoever it was, that one person -- second
6 person also said, you know, the shot -- this will make
7 you drowsy.

8 Q. Anything else you can recall this nurse who
9 was giving him the shot, anything else she said?

10 A. Not that I remember right now, no.

11 MR. GUARINO: All right. I would like to
12 have this marked as an exhibit.

13 (Exhibit 18 marked.)

14 BY MR. GUARINO:

15 Q. If you could take a look at this, Ms. Allen.
16 Do you recognize this document?

17 A. Yes.

18 Q. There's some hand notes on it. Are those
19 your hand notes?

20 A. They're mine and Todd's.

21 Q. And Todd's, okay. Let me see if I can go
22 through this. On the first page -- well, first of
23 all, did you get this document from someone at ANMC?

24 A. Someone, yes.

25 Q. Was it the day that you went with Todd to

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<p>1 the hospital?</p> <p>2 A. Yes.</p> <p>3 Q. And you got it before you were released?</p> <p>4 A. Yes, at some point before we were released.</p> <p>5 Q. And the writing up across the top on the</p> <p>6 first page, is that your handwriting or Todd's?</p> <p>7 A. Todd's.</p> <p>8 Q. And can you read that? It reads, to me:</p> <p>9 "April 18, 2003, visit to ER." Is that what it looks</p> <p>10 like?</p> <p>11 A. Yes.</p> <p>12 Q. And then it's something. Is it maybe "at"?</p> <p>13 A. Yeah.</p> <p>14 Q. And I apologize for the copy. This is the</p> <p>15 way it was produced to us. "At" and then it looks</p> <p>16 like 7:00." I'm assuming that means 7:00 a.m. That</p> <p>17 would have been about the time you went?</p> <p>18 A. Correct.</p> <p>19 Q. And then that next word, is that "pain"?</p> <p>20 A. Yes.</p> <p>21 Q. "Pain all night"?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And then it looks to me like: In R, period,</p> <p>24 ear?</p> <p>25 A. Yes.</p>	<p>1 A. Right. I was going to look it up.</p> <p>2 Q. It's closer than I would have gotten the</p> <p>3 first time.</p> <p>4 A. I was going to see what it was, try and look</p> <p>5 it up.</p> <p>6 Q. All right. And do you remember, when you</p> <p>7 wrote that, was that after you left the hospital, or</p> <p>8 did you write it while you were still at the hospital?</p> <p>9 A. I believe I -- I don't know for sure.</p> <p>10 Q. And then there's some further writing on the</p> <p>11 last page of this document. Can you tell me whose</p> <p>12 writing or printing that is?</p> <p>13 A. It's both.</p> <p>14 Q. Okay. Which is yours and which is</p> <p>15 Mr. Allen's?</p> <p>16 A. The "Aphenodrene" -- I'm not positive on</p> <p>17 that. It looks like it could be either. But the</p> <p>18 "nausea, med" -- I'm thinking that's "med," is Todd.</p> <p>19 "Shot, tablets" is me. "Dr. Fiery," Fearey, whatever,</p> <p>20 that's me. The date is Todd.</p> <p>21 Q. And the Dr. Fiery or Fearey, who was that</p> <p>22 referring to?</p> <p>23 A. I couldn't say.</p> <p>24 Q. All right. And the date, you don't know</p> <p>25 who --</p>
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1 A. Maybe a half hour.

2 Q. And I'm not holding you to the exact time on
3 this. I'm just trying to get a sense of whether you
4 spent all day there or --

5 A. Sure.

6 Q. So you were there long enough to eat, and
7 then what did you do?

8 A. At the same time the prescription was being
9 filled, so we could pick the prescription up.

10 Q. You picked up the Phenergan prescription
11 from ANMC?

12 A. Right.

13 Q. All right. And then what happened?

14 A. And then -- sorry. Then we -- we left. We
15 left the hospital, and we were going to meet Chuck, a
16 friend of Todd's, Chuck Totemoff.

17 Q. Was that the friend who had gotten the pain
18 medications?

19 A. No. A different friend. We were going to
20 go to Sam's Club and go shopping. And he had the
21 Sam's Club card. So that's why we had called him and
22 set it all up. Met with him. And we went shopping at
23 Sam's Club.

24 Q. Let me ask you: Who drove away from ANMC to
25 Sam's Club?

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1 A. I did. I drove that whole day.

2 Q. Okay. And you went to Sam's Club. And how
3 long were you there?

4 A. Maybe half hour, 45 minutes, estimation. In
5 the whole time we were there, Todd was real, even more
6 lethargic to the point, you know, he was -- you know
7 those swings that you put on the front porch that you
8 could sit on and swing, he was laying down on one of
9 those. He would, like, doze off and take a nap.

10 Chuck and I did our shopping and got out of there real
11 quick, since we were in there for -- only there for a
12 weekend. We had to do it.

13 Q. So you finished shopping, and then where did
14 you go next?

15 A. Then we went back to the Microtel, unloaded
16 the truck, went upstairs. And by that time he was
17 just real -- not cognitive, just real tired, real, you
18 know, tired.

19 Q. Other than tired, was he in pain? Was he
20 complaining of other symptoms, being dizzy, being
21 light-headed, anything like that?

22 A. No.

23 Q. So just he felt -- did he say, "I feel
24 tired"?

25 A. Yeah. He said, "I'm tired."

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1 Q. Okay. So what happened next?

2 A. So we unloaded the truck and went upstairs.
3 I told him I wanted to go to REI to get some pants,
4 because at that time I was pregnant. I said, "I need
5 some clothes that fit." He wanted to go with me, but
6 he was so tired. I said, well, you just stay here,
7 take a nap. And then when I get back, then we'll go
8 pick up the painting that he had picked out in Palmer.

9 Q. From this point, from the time you left ANMC
10 up until this time when you're going out again to REI,
11 aside from the shot that he received at ANMC, had he
12 taken any more of the Phenergan?

13 A. Phenergan?

14 Q. Yes.

15 A. Not that I'm aware of.

16 Q. Had he taken any other medication?

17 A. Not that I was aware of, no.

18 Q. Okay. I'm sorry. I'm just trying to follow
19 this along.

20 A. That's okay.

21 Q. So he was tired. You were going to go to
22 REI, and he felt --

23 A. Right. So I went to REI. I left him there.

24 He said, "Okay, I'll take a nap." And by the time --

25 I mean, we were up there for maybe, I don't know, 15,

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1 20 minutes, just hanging out. And then by the time I
2 left for REI, he was asleep.

3 So I left, went to REI. Then I went to
4 McDonald's, got food for both of us, and came home.
5 And he was still sleeping. He was snoring, really
6 loud snore.

7 Q. And I apologize to interrupt you, but it's
8 easier if I take it in bits at a time so I don't have
9 to come back and try and remember what you said,
10 because I'm not taking it down as fast as he is. When
11 you left to go to REI, about what time was that?

12 A. I can't say for sure. It was --

13 Q. Was it still in the morning, or was it in
14 the afternoon now?

15 A. No. It was more early -- well, late
16 morning, early afternoon.

17 Q. And how long were you gone at REI and
18 McDonald's?

19 A. Forty-five minutes tops, not that long.

20 Q. Where is the Microtel hotel that you were
21 staying at?

22 A. It's on International and Minnesota, in that
23 area.

24 Q. Did you go anywhere else other than to REI
25 and to McDonald's?

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1 A. No.
 2 Q. And did you buy some things at REI?
 3 A. No. I didn't see anything I liked.
 4 Q. And then you went to McDonald's and you
 5 bought some food there?
 6 A. Right.
 7 Q. And was it just you or was anyone else with
 8 you?
 9 A. Just me.
 10 Q. And Mr. Allen was back at the hotel alone
 11 sleeping?
 12 A. Correct.
 13 Q. As far as you know.
 14 A. He was alone.
 15 Q. All right. So you get back. And when you
 16 get back, did you know what time it was -- or do you
 17 know what time it was when you got back?
 18 A. I know it was early afternoon still.
 19 Q. Okay. And you said you saw Mr. Allen was
 20 sleeping but he appeared to be snoring?
 21 A. He was snoring, yes.
 22 Q. Okay. And you said -- I think you said
 23 loudly?
 24 A. Right. And Todd snored normally but not --
 25 not as loud as he was snoring. I just attributed it

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1 to, you know, we -- he was up the whole -- because
 2 this was a Saturday. He was up Friday, drove from
 3 Valdez to Anchorage, was up all night. And then the
 4 hospital gave him a shot, which they stated would, in
 5 fact, make him drowsy. So I thought, well, he needs
 6 his sleep. He's tired. That's why he's sleeping so
 7 hard.
 8 Q. And let me back up with that point. You had
 9 driven from Valdez to Anchorage the prior day, and
 10 then Mr. Allen told you he had been up the prior --
 11 Friday night he couldn't sleep, and then Saturday you
 12 went to ANMC.
 13 A. Morning.
 14 Q. Morning. And then this is the afternoon?
 15 A. Correct.
 16 Q. What about the prior day, that Thursday?
 17 Had Todd been working that Thursday?
 18 A. I can't say with certainty, but I don't
 19 think so. I think it was his week off.
 20 Q. All right.
 21 A. And that generally is Tuesday to Tuesday.
 22 Q. Okay. So you thought that given the trip up
 23 from Valdez, the fact that he had been up the night
 24 before, he was just -- and with the shot, that he was
 25 just tired. Is that --

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1 A. That's an accurate description.
 2 Q. Okay. And you noticed that he was snoring
 3 and it appeared to be louder than he normally snored
 4 but you attributed that to the same factors?
 5 A. To being so tired.
 6 Q. Anything else that you saw about him that
 7 was unusual?
 8 A. No.
 9 Q. Okay. All right. So what happened next,
 10 after you came back and he was sleeping and snoring?
 11 A. He was sleeping and snoring. And in the
 12 Microtel rooms, there's -- you walk in. There's a
 13 couch, and then there's a little partition thing. And
 14 then there's a bed. And he was on the bed. So I sat
 15 on the couch and ate my food and left his there for
 16 when he got up. And then went over and tried to wake
 17 him up, you know, to let him know his food was there.
 18 And he didn't wake up, so I thought, well, I will just
 19 let him sleep.
 20 Q. When you say he didn't wake up, did he talk
 21 to you and say, no, I'm still tired? Did he move at
 22 all in response to you, or was he just --
 23 A. No. I didn't try that hard to wake him up.
 24 I just said, "Todd. Todd." You know, he was tired.
 25 I didn't want to wake him up, if he was tired.

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1 Q. And that's what I'm trying to find out. You
 2 sort of called for him --
 3 A. I didn't push or try --
 4 Q. -- and he didn't wake up. Did you touch him
 5 and try and shake him?
 6 A. No.
 7 Q. All right. Then what happened next?
 8 A. Then I laid down next to him on the bed and
 9 watched TV.
 10 Q. And I realize -- do you remember what you
 11 watched?
 12 A. I do not.
 13 Q. Do you know how long you watched TV?
 14 A. Hour, hour and a half or so. A while. Just
 15 relaxing.
 16 Q. Then what happened next?
 17 A. Well, then I tried to wake him up, because
 18 we were going to go get the painting that he had
 19 picked out out in Palmer. But it closed at 5:00 so I
 20 figured, you know, leave by 3:00 to get there, get it
 21 all taken care of.
 22 So I tried to wake him up. He didn't wake
 23 up. I didn't, you know, like forcibly shake him. I
 24 just, you know, again, tried to wake him up. And he
 25 didn't wake up. I thought, well, crap. Okay. So

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1 waited a little bit longer.

2 And then -- and then my hand was on his
3 chest, and I noticed, you know, it was irregular. It
4 was -- you know, you could feel some of his heart
5 going up and down.

6 **Q. The heart was irregular or the breathing was**
7 **irregular?**

8 A. His breathing and the -- you know, it wasn't
9 a normal up and down. And so that -- I mean, that
10 just scared me. So then I really tried to wake him up
11 and shake him. And he was dead weight. And so when I
12 tried to lift him up, thinking if I can lift him up, I
13 would wake him up. I lifted him up and rolled him
14 over, and blood came out of the side of his mouth.

15 **Q. He had been sleeping on his stomach?**

16 A. Back.

17 **Q. On his back. And you tried to roll him over**
18 **onto his stomach?**

19 A. Right side.

20 **Q. And you saw --**

21 A. I was trying to pick him up, is what I was
22 trying to do. When I picked him up and the blood came
23 out of the right side of his mouth, that's when I
24 called 911.

25 **Q. Okay. And he didn't wake up at any time**

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1 **during this process?**

2 A. No.

3 **Q. Okay. And when you called 911, you just**
4 **talked to whoever it was on the other end of the line**
5 **and said your husband was in trouble?**

6 A. I said, "You need to get here right" -- I
7 said, "You need to get here right now. My husband is
8 not breathing. There's blood coming out of his
9 mouth."

10 **Q. And up to this point, no one else has been**
11 **in the room, no one else has seen anything that's gone**
12 **on. It's just you and Mr. Allen?**

13 A. Correct.

14 **Q. And then is the next thing that happens the**
15 **emergency team comes?**

16 A. Well, the next thing, they tried to walk me
17 through CPR.

18 **Q. Over the phone?**

19 A. Yes.

20 **Q. And did you attempt to do CPR?**

21 A. Yeah, I did. She told me to get him on a
22 flat surface. I said, "He is. He's on the bed."
23 They said, "No. He has to be on a hard flat surface."

24 So I had to pull him off the bed to the
25 floor. And he was dead weight, so it was really hard.

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1 I had to push the bed all the way over and pull him
2 off and get him on the floor. And by that time -- I
3 had just started CPR -- the police were knocking on
4 the door to be let in, and then they took over.

5 **Q. Once they took over, you weren't providing**
6 **any care after that?**

7 A. Correct.

8 **Q. Do you remember: When they came in, did you**
9 **talk to them and explain to them what happened?**

10 A. Yeah. They asked me what happened.

11 **Q. And here's where I'm -- if you can remember**
12 **what you told them, I would be interested in hearing**
13 **it. But I would understand if you said I just don't**
14 **remember at the time, because things were happening so**
15 **quickly. Do you remember specifically what you told**
16 **them about the events?**

17 A. I remember specifically that I had told
18 them -- I missed -- sorry. I had -- can we back up a
19 minute?

20 **Q. Sure.**

21 A. Because I had actually -- the time that I
22 had tried to wake him up, I was concerned so I called
23 ANMC.

24 **Q. And if we back up, which time are we talking**
25 **about? Let me ask you: Was it before or after you**

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1 **went to REI?**

2 A. After.

3 **Q. So you came back.**

4 A. Came back.

5 **Q. And you said --**

6 A. And then I had first tried to wake him up
7 and say, "Your food's here. Are you hungry? Do you
8 want to eat?" It wasn't that time. It was the next
9 time after that.

10 **Q. And just so I can place it, as I understand**
11 **it, you came back from REI. You tried to wake him up,**
12 **but you didn't really do a lot. You just sort of**
13 **called to him, and he didn't wake up so you thought**
14 **you would let him sleep.**

15 A. Correct.

16 **Q. And then you sat down and ate your meal?**

17 A. Correct.

18 **Q. And then after that you tried to wake him up**
19 **a second time?**

20 A. Right.

21 **Q. And again --**

22 A. And that's when I thought, well, this isn't
23 normal. So that's when I called ANMC. It was their
24 direct line, and I asked to speak to a nurse.

25 **Q. Now that you got -- so you decided that you**

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<p>1 the problem was, what they were going to do in terms 2 of treatment, anything like that?</p> <p>3 A. No. I can't.</p> <p>4 Q. And did they tell you that afternoon that 5 they thought his prognosis was going to be pretty bad?</p> <p>6 A. Yeah. And even it went into the next day. 7 They weren't sure. Yeah, I don't really call specific 8 conversations. They just weren't positive of the 9 extent of what happened. At least that's what I 10 remember.</p> <p>11 Q. And I think I asked you this but just -- 12 because it occurred to me. After you left ANMC up 13 until the time the emergency team came to get him, did 14 you ever see Mr. Allen take any pain medication during 15 that period?</p> <p>16 A. I never saw him take any.</p> <p>17 Q. Okay. There's a reference in one of the 18 records to a discussion with you about when the 19 decision was made that he was not going to recover, 20 that they asked you about whether you wanted to have 21 an autopsy. Do you remember any discussion like that?</p> <p>22 A. I asked them.</p> <p>23 Q. Whether you could have an autopsy done?</p> <p>24 A. Yes.</p> <p>25 Q. And what did they tell you?</p>	<p>1 be able to do it. You know, they wouldn't be able to 2 do it like that day or the next day or something.</p> <p>3 Q. All right. And did they say that that was 4 going to be a problem or just that that was a fact, 5 that it wouldn't be done right --</p> <p>6 A. That was just one of the points that they 7 brought up.</p> <p>8 Q. Okay. And so did you decide not to have 9 your autopsy?</p> <p>10 A. Yeah. It just -- you know, it didn't seem 11 that it was needed at that time. It didn't seem 12 prudent.</p> <p>13 Q. You initially wanted to have the autopsy so 14 you could try and find out what had happened?</p> <p>15 A. Yeah. It was just -- yeah, basically.</p> <p>16 Q. And did you -- there are lots of medical 17 records in here, but did you ever keep any written 18 notes of your discussions with the doctors or with 19 anyone else, even in a calendar book or date book?</p> <p>20 A. Of the whole Providence thing?</p> <p>21 Q. Well, or anything, from the time you started 22 at ANMC all the way up through your --</p> <p>23 A. I didn't.</p> <p>24 Q. Have you ever seen anyone, any of your 25 relatives or anyone who took notes of what you were</p>
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<p>1 A. They said that if I wanted to have an 2 autopsy done, I would have to pay for it.</p> <p>3 Q. And who told you that?</p> <p>4 A. I don't remember specifically who said it. 5 I wanted to see about having an autopsy so I could 6 determine what happened exactly.</p> <p>7 Q. And who did you talk to? Was this someone 8 at the hospital?</p> <p>9 A. It was someone at Providence. They said I 10 would have to pay for it, and the general course of 11 business is that they only -- you know, I don't 12 remember their specific words. But if it's a 13 questionable cause of death, then they would do an 14 autopsy.</p> <p>15 Q. Oh, I see. If they had some suspicion about 16 how the person died --</p> <p>17 A. Correct.</p> <p>18 Q. -- criminal activity, they might to it 19 automatically?</p> <p>20 A. Yeah.</p> <p>21 Q. But if you wanted to do an autopsy, you 22 would have to do it at your expense?</p> <p>23 A. Yeah. And then it would be not done timely.</p> <p>24 Q. And what does that mean?</p> <p>25 A. It would take them a while to get to do it,</p>	<p>1 saying to the doctors or what they were saying to you, 2 anything like that?</p> <p>3 A. To the people at ANMC? I'm sorry. Could 4 you restate it, please?</p> <p>5 Q. That's fine. I'm trying to find out if 6 there's any record of these discussions. We have got 7 the medical records, and we have your testimony. But 8 I take it there's no written record that you sat down, 9 either at the time or even days later, sat down and 10 said, okay, I'm going to try and re-create exactly 11 what happened on April 19th and sat down and try to 12 write out what had happened? You didn't do that?</p> <p>13 A. No.</p> <p>14 Q. And so my next question is: Well, are there 15 any notes where -- for example, if you were on the 16 phone with the person at ANMC from the hotel, you 17 might have taken some notes on a piece of paper. 18 Maybe you didn't --</p> <p>19 A. No.</p> <p>20 Q. -- but I won't know unless I ask. Do you 21 have any phone notes like that?</p> <p>22 A. No, I don't.</p> <p>23 Q. Do you have any personal notes, other than 24 what we already talked about on Exhibit 18, that 25 document what was going on when you visited ANMC with</p>

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